

Message

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Sent: 12/6/2018 8:43:55 PM
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Subject: December 2018 Update on Columbia River/Lower Snake River Temperature TMDL
Attachments: Nov 21 2018 DOJ Motion for Stay Pending Appeal Columbia Temp TMDL.pdf; Nov 21 2018 US Notice for Appeal Columbia River TMDL.pdf; Nov 28 2018 CRK Court Document Opposing Motion for Stay.pdf; Nov 29 2018 DOJ Reply for Stay Pending Appeal Columbia River Temperature TMDL.pdf; Nov 30 2018 District Court Decision Granting Stay Columbia River TMDL.pdf; TMDL Disapproval _WA_Bartlett ltr.pdf; TMDL Disapproval ltr for OR_Whitman ltr.pdf

Dear State Government Colleagues:

This is a follow up to my November 13th email message with the latest update on the Columbia/Lower Snake River Temperature TMDL.

Since my last email message, EPA sent letters to OR DEQ and WA Ecology on November 16, 2018, disapproving the constructive submission of "no" temperature TMDL. Those letters are attached.

On November 30, 2018, the Court granted EPA's motion for a stay pending appeal in *Columbia Riverkeeper v. Scott Pruitt* (W.D. Wash., Case No. C17-289RSM). In granting the motion, the Court agreed with EPA that the appeal would "raise serious questions of law in an area that is unclear." The Court also found that EPA could face irreparable harm in complying with the order during the pendency of an appeal, and that the public interest would not be served by a "hastily issued TMDL conflicting with further guidance from the Ninth Circuit."

The stay will remain in effect for the duration of an appeal to the Ninth Circuit of the District Court's Order of October 17, 2018. The Solicitor General of the United States has not yet made a final decision regarding an appeal. However, should EPA choose not to pursue an appeal, the stay would be terminated. The parties would discuss with the Court at that time the appropriate schedule for completing the TMDL.

I have attached all of the recent court documents since my last email to you on Nov 13, 2018.

Please let me know if you have questions or need more information.

Background:

- On October 17, 2018, Judge Ricardo Martinez (W.D. Wash.) issued a decision finding that EPA had violated the Clean Water Act (CWA) by failing to undertake its mandatory duty with respect to a temperature Total Maximum Daily Load (TMDL) for the Columbia and Lower Snake Rivers. In 2000, EPA agreed in a Memorandum of Agreement with the States of Washington, Idaho, and Oregon to prepare and issue such a TMDL, but has not yet done so. Plaintiffs alleged that the states having ceded responsibility to EPA plus the lapse of 17 years amounted to a constructive submission of "no TMDL," and that the CWA required EPA to disapprove that submission and issue a completed TMDL. The Court agreed with plaintiffs. The decision includes an order for EPA to act on the constructive submission within 30 days and to issue a new TMDL 30 days thereafter.
- On October 25, 2018, EPA filed a contested motion, seeking relief from the first compliance date in the Court's Order. EPA's Motion to Extend requested an additional 30 days (until December 17, 2018). Columbia Riverkeeper opposed EPA's request for extension of time. On November 8, 2018, the Court denied EPA's motion.

Mary Lou

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